

AMENDED IN ASSEMBLY JUNE 18, 2003

AMENDED IN SENATE JUNE 3, 2003

AMENDED IN SENATE MAY 12, 2003

AMENDED IN SENATE APRIL 22, 2003

SENATE BILL

No. 1009

Introduced by Senator Alpert

February 21, 2003

An act to amend Sections 6487 and 7101 of, and to add Sections 6452.1, 6487.3, and 18510 to, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1009, as amended, Alpert. Use tax collection: income tax forms.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. Existing law requires retailers, as specified, to register with, and to obtain a seller's permit from, the State Board of Equalization. The State Board of Equalization issues forms for the computation and payment of sales and use taxes collected or owed by those retailers. There is no requirement for persons, other than retailers, that owe use taxes to register with the State Board of Equalization. Consequently, those persons do not receive forms for the computation and payment of use taxes.

This bill would, for taxable years beginning on January 1, ~~2004~~ 2003, and ending on December 31, 2009, authorize a person to make an

irrevocable election to report qualified use tax, as defined, on that person's income tax form.

This bill would require the Franchise Tax Board to revise the income tax returns to allow a person to report and remit qualified use taxes to the Franchise Tax Board. This bill would require the Franchise Tax Board to remit the qualified use taxes collected to the State Board of Equalization.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6452.1 is added to the Revenue and
2 Taxation Code, to read:

3 6452.1. (a) Notwithstanding Section 6451, every person that
4 purchases tangible personal property, the storage, use, or other
5 consumption of which is subject to qualified use tax, as defined in
6 subdivision (b), that is otherwise required to report and remit that
7 tax pursuant to this part, may elect to report and remit qualified use
8 tax on an acceptable tax return.

9 (b) (1) A person that reports qualified use tax on an acceptable
10 tax return is deemed to have made the election authorized by this
11 section.

12 (2) (A) In the case of a married individual filing a separate
13 California personal income tax return, an election may be made to
14 report either one-half of the qualified use tax or the entire qualified
15 use tax on his or her separate California personal income tax
16 return.

17 (B) If an individual elects to report one-half of the qualified use
18 tax, that election will not be binding with respect to the remaining
19 one-half of the qualified use tax owed by that individual and that
20 individual's spouse.

21 (c) An election to report qualified use tax on an acceptable tax
22 return shall be irrevocable. *An acceptable tax return that contains*
23 *use tax shall be considered a tax return for purposes of this part.*

24 (d) For purposes of this section:

25 (1) "Acceptable tax return" means a timely filed original
26 return that is filed pursuant to Article 1 (commencing with Section
27 18501), Article 2 (commencing with Section 18601), Section
28 ~~18633, or Section 18633.5 of Chapter 2 of Part 10.2.~~ 18633,

1 *Section 18633.5 of Chapter 2 (commencing with Section 18501)*
 2 *of Part 10.2, or Article 3 (commencing with Section 23771) of*
 3 *Chapter 4 of Part 11.*

4 (2) (A) Except as provided in subparagraph (B), “qualified
 5 use tax” means the use tax imposed under this part, *Section 35 of*
 6 *Article XIII of the California Constitution*, the Bradley-Burns
 7 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
 8 with Section 7200)), or the Transactions and Use Tax Law (Part
 9 1.6 (commencing with Section 7251)) that has not been paid to a
 10 retailer holding a seller’s permit or certificate of registration-use
 11 tax.

12 (B) “Qualified use tax” does not include:

13 (i) Use tax that applies to a mobilehome or a commercial coach
 14 that is required to be registered annually pursuant to the Health and
 15 Safety Code or use tax that applies to a vehicle subject to
 16 identification under Division 16.5 (commencing with Section
 17 38000) of the Vehicle Code, or to a vehicle that qualifies under the
 18 permanent trailer identification plate program pursuant to
 19 subdivision (a) of Section 5014.1 of the Vehicle Code.

20 (ii) Use tax imposed on a vehicle, vessel, or aircraft.

21 (iii) Use tax imposed on a lessee of tangible personal property.

22 ~~(3) “Use tax” means the use tax imposed under this part, the~~
 23 ~~Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5~~
 24 ~~(commencing with Section 7200)), or the Transactions and Use~~
 25 ~~Tax Law (Part 1.6 (commencing with Section 7251)).~~

26 (e) If a person elects to report qualified use tax on an acceptable
 27 tax return, that person shall comply with all of the following:

28 (1) The qualified use tax shall be reported on and remitted with
 29 an acceptable tax return.

30 (2) The qualified use tax shall be reported on and remitted with
 31 an acceptable tax return that is required to be filed for the taxable
 32 year in which the liability for the qualified use tax was incurred.

33 (f) (1) The penalties and interest imposed under this part, the
 34 Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5
 35 (commencing with Section 7200)), or the Transactions and Use
 36 Tax Law (Part 1.6 (commencing with Section 7251)) shall apply
 37 to use tax reported as qualified use tax on an acceptable return.

38 (2) Any claims for refunds or credits of any use tax reported as
 39 qualified use tax on an acceptable tax return shall be made in

1 accordance with Chapter 7 (commencing with Section 6901) of
2 this part.

3 (3) Qualified use tax shall be considered to be timely reported
4 and remitted for purposes of this part, the Bradley-Burns Uniform
5 Local Sales and Use Tax Law (Part 1.5 (commencing with Section
6 7200)), and the Transactions and Use Tax Law (Part 1.6
7 (commencing with Section 7251)), if the qualified use tax is timely
8 reported on and remitted with an acceptable tax return in
9 accordance with the provisions of this section.

10 (g) Notwithstanding a person's election to remit and to report
11 qualified use tax on an acceptable tax return, the State Board of
12 Equalization is not precluded from making any determinations for
13 understatements of qualified use tax against that person in
14 accordance with Part 5 (commencing with Section 6451).

15 (h) Any payments and credits shown on the return, together
16 with any other credits associated with that person's account, of a
17 person that elects to report qualified use tax on an acceptable tax
18 return shall be applied in the following order:

19 (1) Taxes imposed under Part 10 (commencing with Section
20 17001) or Part 11 (commencing with Section 23001);

21 ~~(2) Penalties, including penalties and interest, if any, imposed~~
22 ~~under Part 10.2 (commencing with Section 18041).~~

23 ~~(3)–~~

24 (2) Qualified use tax reported on the acceptable tax return in
25 accordance with this section.

26 (i) (1) This section does not apply to a person who is otherwise
27 required to hold a seller's permit or to register with the State Board
28 of Equalization pursuant to Part 1 (commencing with Section
29 6001) of this division.

30 (2) This section applies to purchases of tangible personal
31 property made on or after January 1, 2004 2003, in taxable years
32 beginning on or after January 1, 2004 2003, and on or before
33 December 31, 2009, and as of that date becomes inoperative,
34 unless a later enacted statute extends the operation of this section.

35 ~~(3) Notwithstanding the repeal of this section, any provisions~~

36 (3) *Notwithstanding this section becoming inoperative as*
37 *described in paragraph (2), any provisions in this section or*
38 *Section 18510 relating to collection activities attributable to*
39 *qualified use taxes reported prior to the repeal inoperative date of*

1 this section shall continue in the same manner as if this section
2 were still ~~in effect~~ *operative*.

3 SEC. 2. Section 6487 of the Revenue and Taxation Code is
4 amended to read:

5 6487. (a) For taxpayers filing returns, other than a return
6 filed pursuant to Section 6452.1, on other than an annual basis,
7 except in the case of fraud, intent to evade this part or authorized
8 rules and regulations, or failure to make a return, every notice of
9 a deficiency determination shall be mailed within three years after
10 the last day of the calendar month following the quarterly period
11 for which the amount is proposed to be determined or within three
12 years after the return is filed, whichever period expires the later.
13 In the case of failure to make a return, every notice of
14 determination shall be mailed within eight years after the last day
15 of the calendar month following the quarterly period for which the
16 amount is proposed to be determined.

17 (b) For taxpayers filing returns on an annual basis, except in the
18 case of fraud, intent to evade this part or authorized rules and
19 regulations, or failure to make a return, every notice of a
20 deficiency determination shall be mailed within three years after
21 the last day of the calendar month following the one-year period
22 for which the amount is proposed to be determined or within three
23 years after the return is filed, whichever period expires the later.
24 In the case of failure to make a return, every notice of
25 determination shall be mailed within eight years after the last day
26 of the calendar month following the one-year period for which the
27 amount is proposed to be determined.

28 (c) The limitation specified in this section does not apply in
29 case of a sales tax proposed to be determined with respect to sales
30 of property for the storage, use, or other consumption of which
31 notice of a deficiency determination has been or is given pursuant
32 to subdivision (a) or (b) or pursuant to Section 6486, 6515, or
33 6536. The limitation specified in this section does not apply in case
34 of an amount of use tax proposed to be determined with respect to
35 storage, use, or other consumption of property for the sale of which
36 notice of a deficiency determination has been or is given pursuant
37 to subdivision (a) or (b) or pursuant to Section 6486, 6515, or
38 6536.

39 SEC. 3. Section 6487.3 is added to the Revenue and Taxation
40 Code, to read:

6487.3. (a) (1) For persons that elect to report qualified use tax in accordance with Section 6452.1, except in the case of fraud, intent to avoid this part or authorized rules and regulations issued by the board, or the gross understatement of qualified use taxes, every notice of a deficiency determination with respect to the qualified use tax shall be mailed within three years after the last day for which an acceptable tax return is due or filed, whichever occurs later.

(2) In the case of a gross understatement of qualified use tax, every notice of a deficiency determination with respect to the qualified use tax shall be mailed within six years after the last day for which an acceptable tax return is due or filed, whichever occurs later.

(3) For purposes of this subdivision a “gross understatement of qualified used tax” is a deficiency that is in excess of 25 percent of the amount of qualified use tax reported on a person’s acceptable tax return. In the case of married individuals filing separate California personal income tax returns, the total amount of qualified use tax reported will be considered in determining whether there is a gross understatement of qualified use tax.

(4) For purposes of this section “acceptable tax return” means a timely filed original return that is filed pursuant to Article 1 (commencing with Section 18501), Article 2 (commencing with Section 18601), Section 18633, ~~or~~ Section 18633.5 of Chapter 2 of Part 10.2 (commencing with Section 18501) of Part 10.2, or Article 3 (commencing with Section 23771) of Chapter 4 of Part 11.

~~(b) This section shall be operative on January 1, 2004, and shall remain operative until December 31, 2009, and as of that date becomes inoperative, unless a later enacted statute extends the operation of this section.~~

(b) This section applies to reporting of purchases of tangible personal property made on or after January 1, 2003, in taxable years beginning on or after January 1, 2003, and on or before December 31, 2009, and as of that latter date becomes inoperative, unless a later enacted statute extends the operation of this section.

SEC. 4. Section 7101 of the Revenue and Taxation Code is amended to read:

7101. All fees, taxes, interest, and penalties imposed and all amounts of tax required to be paid to the state under this part shall,

except as provided in Section 6452.1, be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments to the Treasurer to be deposited in the State Treasury to the credit of the Retail Sales Tax Fund.

SEC. 5. Section 18510 is added to the Revenue and Taxation Code, to read:

18510. (a) (1) The Franchise Tax Board shall revise the returns required to be filed pursuant to this article, Article 2 (commencing with Section 18601), Section 18633, ~~and Section 18633.5~~ *Section 18633.5, and Article 3 (commencing with Section 23771) of Chapter 4 of Part 11* in a form and manner approved by the State Board of Equalization, to allow a person to report and pay qualified use tax in accordance with the provisions of Section 6452.1.

(2) *Within 10 working days of receiving from the Franchise Tax Board the returns described in paragraph (1), the State Board of Equalization shall do either of the following:*

(A) *Approve the form and manner of the returns and notify the Franchise Tax Board of this approval.*

(B) *Submit comments to the Franchise Tax Board regarding changes to the returns that shall be incorporated before the State Board of Equalization approves the form and manner of the returns.*

(b) Any payments and credits shown on the return, together with any other credits associated with that person's account, of a person that elects to report qualified use tax on an acceptable tax return shall be applied in the following order:

(1) Taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001);

~~(2) Penalties, including penalties and interest, if any, imposed under this part.~~

~~(3)~~

(2) Qualified use tax as reported on the acceptable tax return, in accordance with Section 6452.1.

(c) The Franchise Tax Board shall transfer the qualified use tax received pursuant to Section 6452.1, *and any information the State Board of Equalization deems necessary for its administration of the use tax*, to the State Board of Equalization within 60 days from

- 1 the date the use tax is received *or the acceptable tax return is*
2 *processed, whichever is later.*
- 3 (d) This section shall be operative for returns filed for taxable
4 years on and after January 1, ~~2004~~ 2003, and ending on or before
5 December 31, 2009, and as of that date becomes inoperative,
6 unless a later enacted statute extends the operation of this section.

